

1 IN THE UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MISSOURI
3 WESTERN DIVISION

4 ANDREW TYLER FOSTER, ET AL,)
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10 TRANSCRIPT OF TELEPHONE CONFERENCE
11 BEFORE THE HONORABLE BRIAN C. WIMES
12 UNITED STATES DISTRICT JUDGE

13 Proceedings recorded by electronic voice writing
14 Transcript produced by computer

APPEARING BY TELEPHONE

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February 14, 2017

(Proceedings began at 10:04 AM)

3 THE COURT: Good morning, Counsel. I understand --
4 I know my law clerk has taken down who is on this call.

5 I guess I will let you all start because you all
6 asked me to get on the conference call. So whoever it is that
7 wants to start. Mr. Dollar, is on?

8 MR. DOLLAR: I am.

9 THE COURT: Yes.

10 MR. DOLLAR: Your Honor, I am happy to start off and
11 let other people weigh in if the Court is okay with that?

12 THE COURT: Sure.

13 MR. DOLLAR: Thank you for getting on the call with
14 us.

15 As you know this is a follow up to a conference, a
16 status conference we had a short time ago. And all of the
17 parties expressed to you at that time our interest in filing
18 our motion for preliminary approval and getting a ruling as
19 quickly as possible, which the Court was comfortable with. We
20 had a few issues that we had to address, which we did. And we
21 have now filed our motion for preliminary approval.

22 We submitted with that a proposed order and I guess
23 more recently there was one correction that we submitted to
24 you.

25 So we wanted to, in keeping with your practice, jump

1 on the phone with you briefly and make sure of a couple of
2 things.

3 No. 1, that we let you know that in the proposed
4 order we set forth various timeframes with all of the various
5 filings that need to occur in connection with this settlement.
6 Our intent is that when the actual notice goes out, assuming
7 you approve this, that those notices will have the actual
8 date. We will do the math for these folks and put the
9 deadlines in conformance with the timeframes that we have set
10 out with the proposed order. So there will be no
11 miscommunication or misunderstanding about that. When we do
12 that our best calculation which also leads to -- which we have
13 left blank in the proposed order, is that you need to set a
14 date for a final approval or fairness hearing. And my our
15 calculation that date can no be sooner than June 20. No
16 sooner than June 20. But we would like, in accordance with
17 whatever the Court could make available, a date shortly
18 thereafter something that we will work for the Court as well
19 as the parties. So that was the second thing we wanted to
20 apprise you of.

21 And, third, we wanted to make sure in light of the
22 fact that we -- we wanted to make sure that you have enough
23 time to look at it, and we wanted to make sure that all
24 counsel make themselves available to the Court to answer any
25 questions that -- or concerns that you might have with the

1 settlement. So.

2 That's those are my -- that's my overview of it.

3 I'll advise Mr. Godfrey if he has anything to add.

4 MR. GODFREY: Good morning, Your Honor. This is
5 Richard Godfrey on behalf of the defendant.

6 THE COURT: Good morning.

7 MR. GODFREY: We very much appreciate you taking the
8 time this morning to address this issue. The plaintiffs have
9 filed a motion for unopposed approval of class certification,
10 as well as approval preliminarily of the settlement agreement.

11 L-3's position is that the settlement agreement is
12 fair, reasonable and adequate. There is a timing issue here
13 which Mr. Dollar alerted you I think to during our last status
14 conference. In which where I can confirm because of media
15 buys and because of the notice program we need to have
16 approval as soon as possible.

17 It would be ideal for today, but certainly we
18 understand, the Judge, Your Honor, may have questions and we
19 understand how that works, but I think we -- I wanted to
20 remind Your Honor that we had this discussion a week and a
21 half ago in terms of the sensitivity on timing here.

22 Unless the Court has any questions of me, I think
23 the papers have been filed, Mr Dollar filed a corrected draft
24 order for Your Honor,'s consideration. And I have nothing
25 further to add unless the Court has questions of me?

1 THE COURT: Yeah, I've got a couple. I haven't the
2 opportunity at this time to see the proposed order. I know it
3 has been filed, and I know there was an e-mail sent with terms
4 of the correction. I guess my first question is this: Last
5 week when we got on the phone, you're like, hey, Judge, review
6 it. We need to take a look. Hopefully you can get it signed
7 by Thursday, if not by Friday. I was like fine. So now, we
8 on Tuesday, hey, Judge, and I understand the sensitivity of
9 it, but with that said, my question probably would be why
10 didn't I get it last week? Yes, I will review it, and I'll
11 review it as quickly today, I'm just not sure that I can get
12 it reviewed today just in light of my schedule.

13 My second question would be this: Because I was --
14 it was you all's hope that I would sign this either Thursday
15 or Friday of last week. You said, hey, Judge, that's time
16 sensitive because we have built in these certain amount of
17 days. Am I to assume -- and I haven't read it yet, now, we
18 somehow subtract the days that it's taken for me to sign this?

19 I guess my comfort level would be this, the 60 days.
20 I think we had factored in 60 days. Am I incorrect? From the
21 date of signing which in you all's mind would've been 60 or so
22 would've been last Thursday or Friday. So now are we losing
23 those days in terms of notice?

24 MR. DOLLAR: No. No, Your Honor. And I think I can
25 address and Mr. Godfrey can add to it. But you are correct

1 that our hope was last week. I want to be candid with the
2 Court in that there were some issues that popped up in the
3 drafting of the language that turned out to be more
4 substantive than we had anticipated, and it took us a few days
5 unanticipated, to get those issues worked out.

6 In the meantime as part of an accommodation to get
7 those issues worked out, L-3 was able to contact their media
8 person and get accommodation from their media outlets to a
9 short extension of what we had otherwise anticipated was sort
10 of drop-dead date. We have now accomplished that. So both
11 things were accomplished. We've worked through the issues and
12 got an extension on the notice.

13 THE COURT: What is the short extension? Because
14 I'm sure their short extension impacts me. Because, you're
15 saying, well, Judge, their short extension -- lets say it was
16 two days. So I need you to sign it today. I mean, so I know
17 it only doesn't impact you all, but it impacts the Court. So
18 I guess my question would be what's the short extension that
19 they have? Because the drop-dead date was Thursday or Friday.
20 Now, we have a new drop-dead date. I guess, in the end,
21 bottom line, what is the drop-dead date that you would like me
22 to do this? What is the drop-dead date?

23 MR. DOLLAR: I'll let Mr. Godfrey address that.

24 I will say this, that the anticipation is that all
25 the noticed time frames remain the same, the extension was

1 with respect to the need to get the media buys. My
2 understanding from talking to Jay this morning, is we do not,
3 there is not a rush for today. We have until tomorrow for
4 sure and maybe longer, but I will let Rick address that.

5 MR. GODFREY: Thank you, Mr. Dollar.

6 Your Honor, Mr. Dollar has described I think
7 correctly what transpired. The parties have worked very hard
8 in the last six days to finalize it. It took a little more
9 work than we anticipated and we regret that, but we did not
10 anticipate that at the time we had our last hearing.

11 We would ideally -- if the Court cannot get to it
12 today, we need this tomorrow. Possibly we can get it -- if we
13 have an order of approval no later than Thursday morning
14 around noon. But we got -- I'm told that we don't have any
15 more flexibility with the media buys after that point in time.
16 So tomorrow is really the kind of stretch.

17 But obviously, it's your schedule, Your Honor, we
18 understand that. I'm trying to be as candid as I can based on
19 my understanding of the media buy cycles in terms of what the
20 timing is. And if Your Honor, says I don't have time today,
21 we understand that. But we would very much appreciate it if
22 it could be tomorrow. And like I said there might be a little
23 time with Thursday morning, but that's really pushing it, I
24 think, and I'm not really 100 percent about that.

25 THE COURT: Okay. And I appreciate your candor with

1 respect to this. And so, you know, I anticipate I can get it
2 out during this time period. I guess, you know, always --
3 well, I'll just leave that alone. I'll work hard.

4 If for some reason, I can't or I need to get parties
5 on the phone to ask questions, I will. I just haven't had the
6 opportunity to look at this. I will make every effort to be
7 able to do that tomorrow. Probably can be able to do that.
8 But I will ask counsel to hopefully make themselves available
9 if I have any questions.

10 I think my ultimate concern was just the timeframe
11 that we are talking, and if the media buy is still for the
12 timeframe I'm fine with that, the 60 days. And that these
13 four days or five days that you all are working out kind of
14 the final, the final agreements didn't impact those 60 days,
15 then I should be fine with that. And I think anything else --
16 if I have a question I'll make sure to get you guys on the
17 phone so we can try and iron them out so I can get this
18 reviewed and approved by tomorrow.

19 MR. GODFREY: Thank you, Your Honor. On behalf of
20 L-3 EOTech we really appreciate it. I'll make myself
21 available anytime day or night tomorrow.

22 THE COURT: Okay.

23 MR. GODFREY: I will say on Thursday morning I'm on
24 a flight to South Carolina, but I land at 11:30. So if for
25 some reason you have a question on Thursday morning, I'll

1 figure out to cover.

2 THE COURT: You know, hopefully we'll be able to get
3 something. If I have questions it will be tomorrow. I will
4 just reprioritize a few things and make sure I get to it so I
5 can see it. If I have questions, fine, if not, you'll see
6 when I approve the proposed agreement, settlement.

7 MR. GODFREY: Thank you so much, Your Honor.

8 THE COURT: Okay. I appreciate you all getting on
9 the phone and your candor and hopefully I can get this out
10 tomorrow.

11 MR. DOLLAR: Thank you, Your Honor.

12 MR. GODFREY: Thank you, again.

13 THE COURT: Thank you.

14

15 (THEREUPON, the following proceedings were adjourned.)

16

17 CERTIFICATE

18

19 I certify that the foregoing is a correct transcript
20 from the record of the proceedings in the above-entitled
21 matter.

22

February 17, 2017

23

24 /s/ Denise C. Halasey
Denise C. Halasey, CCR, CVR-CM
25 United States Court Reporter

Denise Carroll Halasey CCR, CVR-CM